

2009 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB171)

Received: **10/20/2009**

Received By: **phurley**

Wanted: **As time permits**

Identical to LRB:

For: **Marlin Schneider (608) 266-0215**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **phurley**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - miscellaneous**

Extra Copies: **Heidi Frechette**

Submit via email: **YES**

Requester's email: **Rep.Schneider@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Misuse of a global positioning device

Instructions:

Incorporate amendment 1, amendment 1 to amendment 1, amendment 2 with change (after "owned" insert "leased, or assigned for use), amendment 3, and LRB09a0882.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	phurley 10/20/2009	jdye 10/21/2009		_____			
/1			phenry 10/21/2009	_____	lparisi 10/21/2009	lparisi 10/21/2009	
/2	phurley 11/04/2009	jdye 11/04/2009	jfrantze 11/04/2009	_____	cdurst 11/04/2009	cdurst 11/04/2009	

FE Sent For:

<END>

2009 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB171)

Received: **10/20/2009**

Received By: **phurley**

Wanted: **As time permits**

Identical to LRB:

For: **Marlin Schneider (608) 266-0215**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **phurley**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - miscellaneous**

Extra Copies: **Heidi Frechette**

Submit via email: **YES**

Requester's email: **Rep.Schneider@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Misuse of a global positioning device

Instructions:

Incorporate amendment 1, amendment 1 to amendment 1, amendment 2 with change (after "owned" insert "leased, or assigned for use), amendment 3, and LRB09a0882.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	phurley 10/20/2009	jdye 10/21/2009		_____			
/1		1/2 11/4 jld	phenry 10/21/2009	_____	lparisi 10/21/2009	lparisi 10/21/2009	

FE Sent For:

<END>

2009 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB171)

Received: **10/20/2009**

Received By: **phurley**

Wanted: **As time permits**

Identical to LRB:

For: **Marlin Schneider (608) 266-0215**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **phurley**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - miscellaneous**

Extra Copies: **Heidi Frechette**

Submit via email: **YES**

Requester's email: **Rep.Schneider@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Misuse of a global positioning device

Instructions:

Incorporate amendment 1, amendment 1 to amendment 1, amendment 2 with change (after "owned" insert "leased, or assigned for use), amendment 3, and LRB09a0882.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1?	phurley	10/21 jld	12/2/09	12/2/09			

FE Sent For:

<END>

Schneider

Hray's sub + a0492

Am 1

Am 1 to Am 1 a0506

Ans 2 w/change a0481

Am 3 a0501

a0882/2

Heidi Frechette



State of Wisconsin
2009 - 2010 LEGISLATURE

50168/1
LRB-2008-007

PJH:jld:ph

↑
stays

2009 ASSEMBLY BILL 171

10.20.09

March 26, 2009 - Introduced by Representatives KRAMER, KESSLER and SCHNEIDER, cosponsored by Senator ERPENBACH. Referred to Committee on Personal Privacy.

✓

regen

1 AN ACT *to create* 940.315 of the statutes; **relating to:** unlawful use of a global
2 positioning device and providing a penalty. ✓

Analysis by the Legislative Reference Bureau

This bill makes it unlawful to place a global positioning device on another person's vehicle without that person's knowledge and consent or to intentionally obtain information regarding another person's movement or location generated by a global positioning device without that person's knowledge or consent. A person who does so is guilty of a Class I felony and is subject to a fine not to exceed \$10,000, imprisonment not to exceed three years and six months, or both.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 940.315 of the statutes is created to read:

(1) (C)

4 **940.315 Global positioning devices.** Whoever places a global positioning
5 device on a vehicle owned or used by another person without that person's knowledge

ASSEMBLY BILL 171

SECTION 1

Insert 2.3

1 and consent or intentionally obtains information regarding another person's
2 movement or location generated by a global positioning device without that person's
3 knowledge or consent is guilty of a Class I felony. This section does not apply to a law
4 enforcement officer acting in his or her official capacity or to an employer, as defined
5 in s. 343.245 (1) (b), acting to track the movement or location of a commercial motor
6 vehicle during business hours.

owned, leased, or assigned for use by the employer (END)

Insert 2.6

Insert 2.7

A misdemeanor

and pursuant to a
warrant issued
under s. 96B.365,



State of Wisconsin
2009 - 2010 LEGISLATURE

LRBa0882/2
PJH:cjs:jf

**ASSEMBLY AMENDMENT
TO 2009 ASSEMBLY BILL 171**

Insert 2.3

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 2, line 3: after "apply to" insert "a person, acting within the scope of
3 his or her employment, who installs a factory-installed, ✓ subscription-based
4 communication and navigation system on to
5

END



State of Wisconsin
2009 - 2010 LEGISLATURE

LRBa0492/1
PJH:nwn:ph

**ASSEMBLY AMENDMENT 1,
TO 2009 ASSEMBLY BILL 171**

June 3, 2009 - Offered by Representatives ~~KESSLER~~ and ~~KRAMER~~.

*Insert
2.6*

At the locations indicated, amend the bill as follows:

1. Page 1, line 4: after "**devices.**" insert "(1)".

2. Page 1, line 5: delete "or used".

3. Page 2, line 3: delete "section" and substitute "subsection".

4. Page 2, line 6: after "vehicle" insert "owned by the employer".

5. Page 2, line 6: after that line insert:

(2) ✓ Whoever places a global positioning device on a vehicle ✓ used primarily by his or her spouse after a petition for an annulment, divorce, or legal separation has been filed without that person's knowledge and consent is guilty of a Class I felony. This subsection does not apply to a law enforcement officer acting in his or her official capacity or to an employer, as defined in s. 323.245 (1) (b), acting to track the

primarily

Amended

Insert 2.6 cont.

✓
released,
or assigned for use

1 movement or location of a commercial vehicle owned by the employer during
2 business hours.

(end ins 2-6)

~~END~~



State of Wisconsin
2009 - 2010 LEGISLATURE

LRBa0501/1
PJH:jld:ph

**ASSEMBLY AMENDMENT 3,
TO 2009 ASSEMBLY BILL 171**

June 3, 2009 - Offered by Representatives KESSLER and KRAMER.

*Insert
2.7*

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 2, line 4: after "capacity" insert "and pursuant to a warrant issued
3 under s. 968.365,"

4 **2.** Page 2, line 6: after that line insert:

5 **SECTION ~~968.355~~ [#] 968.355** of the statutes is created to read:

6 **968.355 Application for an order for global positioning device.** (1) The
7 attorney general or a district attorney may make application for an order or an
8 extension of an order under s. 968.365[✓] authorizing or approving the installation and
9 use of a global positioning device, in writing under oath or equivalent affirmation,
10 to a circuit court for the county where the device is to be located.

11 **(2)** An application under sub. (1)[✓] shall include all of the following:

12 (a) The identity of the person making the application and the identity of the law
13 enforcement agency conducting the investigation.

1 (b) A full and complete statement of the facts and circumstances relied upon
2 by the applicant, to justify the applicant's belief that an order should be issued or
3 extended, including:

4 1. Details of the particular offense that the applicant has probable cause to
5 believe has been, is being, or is about to be committed by the person who owns the
6 vehicle to which the global positioning device is to be attached.

7 2. A certification by the applicant that the information likely to be obtained is
8 relevant to the ongoing criminal investigation being conducted by that agency.

9 **SECTION 968.365** of the statutes is created to read:

10 **968.365 Issuance of an order for a global positioning device.** (1) Upon
11 an application made under s. 968.355, the court shall enter an ex parte order
12 authorizing the installation and use of a global positioning device within the
13 jurisdiction of the court if the court finds that the applicant has proved to the court
14 that there is probable cause to believe that the person who owns the vehicle to which
15 the global positioning device is to be attached has, is, or will commit an offense and
16 that the applicant has certified to the court that the information likely to be obtained
17 by the installation and use is relevant to an ongoing criminal investigation.

18 (2) An order issued under this section shall do all of the following:

19 (a) Specify the identity, if known, of the person who owns the vehicle to which
20 the global positioning device is to be attached.

21 (b) Specify the identity, if known, of the person who is the subject of the criminal
22 investigation.

23 (c) Specify, if known, the registration plate numbers and the color, make, model,
24 and year of any motor vehicle to which the global positioning device is to be attached.

Insert
2.7.11
11
2 (d) Provide a statement of the offense to which the information likely to be
3 obtained by the global positioning device relates.

3 (3) An order issued under this section shall authorize the installation and use
4 of a global positioning device for a period not to exceed 60 days.

5 (4) Extensions of the order may be granted, but only upon an application for
6 an order under s. 968.355[✓] and upon the judicial finding required by sub.[✓](1). The
7 period of extension shall be for a period not to exceed 60 days.

8 (5) An order authorizing or approving the installation and use of a global
9 positioning device shall direct that the order be sealed until otherwise ordered by the
10 court.

11 (6) Evidence obtained by placing a global positioning device on a vehicle in
12 contravention of this section or of s. 940.315[✓] may not be introduced in a criminal
13 trial⁴

(end ins 2-7)

END

Hurley, Peggy

From: Sholty, Cameron
Sent: Friday, October 30, 2009 11:48 AM
To: Hurley, Peggy
Subject: RE: LRB 09a0882 Topic: GPS tracking

Thanks.

From: Hurley, Peggy
Sent: Friday, October 30, 2009 11:44 AM
To: Sholty, Cameron
Subject: RE: LRB 09a0882 Topic: GPS tracking

No problem! I'll get the amendment to you asap.

Peggy

From: Sholty, Cameron
Sent: Friday, October 30, 2009 11:43 AM
To: Hurley, Peggy
Subject: RE: LRB 09a0882 Topic: GPS tracking

Ok. Thanks. That's helpful.

Can you please draft up an amendment to that effect then? Thanks again.

From: Hurley, Peggy
Sent: Friday, October 30, 2009 11:42 AM
To: Sholty, Cameron
Subject: RE: LRB 09a0882 Topic: GPS tracking

I do not think it changes the substance of the bill, but it's not a "technical amendment" in that it does more than, say, correct a typographical error.

From: Sholty, Cameron
Sent: Friday, October 30, 2009 11:40 AM
To: Hurley, Peggy
Subject: RE: LRB 09a0882 Topic: GPS tracking

Do you think it is more technical in nature than changing the substance of the bill? I think the change still preserves the intent of the original language of the amendment carving out OnStar, but you are the expert.

From: Hurley, Peggy
Sent: Friday, October 30, 2009 11:38 AM
To: Sholty, Cameron
Cc: Frechette, Heidi
Subject: RE: LRB 09a0882 Topic: GPS tracking

Hi Cameron,

Being a technological rube, I looked up "on star" and "navigation systems" on the internet when I drafted the bill. Here is the OnStar

11/04/2009

FW: LRB 09a0882 Topic: GPS tracking

website that, as I read it, says that they can only be installed at the factory:

http://www.onstar.com/us_english/jsp/explore/get_onstar.jsp

Apparently, this is not true. The suggested changes make sense, then, and I can draft an amendment to AB 171 that makes those changes. Just let me know what you want me to do.

Peggy

From: Sholty, Cameron
Sent: Friday, October 30, 2009 11:30 AM
To: Hurley, Peggy
Subject: FW: LRB 09a0882 Topic: GPS tracking

Peggy -

Could you please take a look at the concerns expressed by Katie Walby (representing OnStar/GM) below? I'm hoping that if a change to the bill needs to occur to clarify the language/intent of AB 171 (and certain provisions therein), that it would be considered more technical than substantive.

I spoke with Heidi at Leg Council and she thought I should get your thoughts and input.

I'm available via cell all day at 414-526-6164 if my question/concern isn't entirely clear. Thanks so much!

From: Sholty, Cameron
Sent: Thursday, October 29, 2009 1:47 PM
To: Frechette, Heidi
Subject: FW: LRB 09a0882 Topic: GPS tracking

Heidi -

Could you please review the below concerns and respond with your opinion? Thanks so much.

Cameron Sholty
Office of State Rep. Bill Kramer

From: Walby, Kathleen M. [mailto:KWalby@foley.com]
Sent: Wednesday, October 28, 2009 5:05 PM
To: Sholty, Cameron
Subject: RE: LRB 09a0882 Topic: GPS tracking

Hi Cameron:

Here's some rationale to pass along to Leg Council.

The current amendment exempts "factory-installed" systems. While OnStar is typically installed at the factory, sometimes (if feasible) it is installed after the purchase of the vehicle. Installation after the fact would typically occur through dealers or customer assistance. The proposed changes to the amendment (see below) would extend the exemption to subscription-based communication or navigation systems, regardless of whether they are installed at the factory or after the purchase of the vehicle.

"a person, acting within the scope of his or her employment, who installs a ~~factory-installed~~ subscription-based communication ~~and~~ or navigation system or to"

Thanks for your help.

11/04/2009

Katie Walby
Foley & Lardner LLP - Madison
608-258-4783

From: Sholty, Cameron [mailto:Cameron.Sholty@legis.wisconsin.gov]
Sent: Tuesday, October 27, 2009 4:43 PM
To: Walby, Kathleen M.
Subject: RE: LRB 09a0882 Topic: GPS tracking

Can you get me about 3-5 sentences explaining OnStar's concerns to pass along to Leg. Council? Thanks.

From: Walby, Kathleen M. [mailto:KWalby@foley.com]
Sent: Tuesday, October 27, 2009 12:48 PM
To: Sholty, Cameron
Subject: RE: LRB 09a0882 Topic: GPS tracking

Hi Cameron:

Here's OnStar's suggested change. I'll check in with them on "and or" after "factory installed." Also, attached is Michigan's proposed bill.

"a person, acting within the scope of his or her employment, who installs a ~~factory installed~~, subscription-based communication ~~and~~ or navigation system or to"

Thanks your help on this, Cameron!

Sincerely,

Katie Walby
Foley & Lardner LLP - Madison
608-258-4783

From: Sholty, Cameron [mailto:Cameron.Sholty@legis.wisconsin.gov]
Sent: Thursday, October 15, 2009 2:08 PM
To: Walby, Kathleen M.
Subject: FW: LRB 09a0882 Topic: GPS tracking

From: Barman, Mike
Sent: Thursday, October 15, 2009 9:44 AM
To: Rep.Kramer
Subject: LRB 09a0882 Topic: GPS tracking

The attached proposal has been jacketed for introduction.

A copy has also been sent to:

<<LRB a0882_2>>

11/04/2009

The preceding email message may be confidential or protected by the attorney-client privilege. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this message in error, please (i) do not read it, (ii) reply to the sender that you received the message in error, and (iii) erase or destroy the message. Legal advice contained in the preceding message is solely for the benefit of the Foley & Lardner LLP client(s) represented by the Firm in the particular matter that is the subject of this message, and may not be relied upon by any other party.

Internal Revenue Service regulations require that certain types of written advice include a disclaimer. To the extent the preceding message contains advice relating to a Federal tax issue, unless expressly stated otherwise the advice is not intended or written to be used, and it cannot be used by the recipient or any other taxpayer, for the purpose of avoiding Federal tax penalties, and was not written to support the promotion or marketing of any transaction or matter discussed herein.

The preceding email message may be confidential or protected by the attorney-client privilege. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this message in error, please (i) do not read it, (ii) reply to the sender that you received the message in error, and (iii) erase or destroy the message. Legal advice contained in the preceding message is solely for the benefit of the Foley & Lardner LLP client(s) represented by the Firm in the particular matter that is the subject of this message, and may not be relied upon by any other party.

Internal Revenue Service regulations require that certain types of written advice include a disclaimer. To the extent the preceding message contains advice relating to a Federal tax issue, unless expressly stated otherwise the advice is not intended or written to be used, and it cannot be used by the recipient or any other taxpayer, for the purpose of avoiding Federal tax penalties, and was not written to support the promotion or marketing of any transaction or matter discussed herein.



State of Wisconsin
2009 - 2010 LEGISLATURE

LRBs0168/1
PJH:jld:ph

2
rmr

ASSEMBLY SUBSTITUTE AMENDMENT ,
TO 2009 ASSEMBLY BILL 171

Today
11-4-09

Regen

✓

1 AN ACT *to create* 940.315, 968.355 and 968.365 of the statutes; **relating to:**
2 unlawful use of a global positioning device and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 940.315 of the statutes is created to read:

4 **940.315 Global positioning devices.** (1) Whoever places a global
5 positioning device on a vehicle owned by another person without that person's
6 knowledge and consent or intentionally obtains information regarding another
7 person's movement or location generated by a global positioning device without that
8 person's knowledge or consent is guilty of a Class A misdemeanor. This section does
9 not apply to a person, acting within the scope of his or her employment, who installs
10 a factory-installed subscription-based communication ^{✓ or} and navigation system, to a
11 law enforcement officer acting in his or her official capacity and pursuant to a
12 warrant issued under s. 968.365, or to an employer, as defined in s. 343.245 (1) (b),

1 acting to track the movement or location of a commercial motor vehicle owned,
2 leased, or assigned for use by the employer during business hours.

3 (2) Whoever places a global positioning device on a vehicle used primarily by
4 his or her spouse after a petition for an annulment, divorce, or legal separation has
5 been filed without that person's knowledge and consent is guilty of a Class A
6 misdemeanor. This subsection does not apply to a law enforcement officer acting in
7 his or her official capacity or to an employer, as defined in s. 323.245 (1) (b), acting
8 to track the movement or location of a commercial vehicle owned, leased, or assigned
9 for use by the employer during business hours.

10 **SECTION 2.** 968.355 of the statutes is created to read:

11 **968.355 Application for an order for global positioning device.** (1) The
12 attorney general or a district attorney may make application for an order or an
13 extension of an order under s. 968.365 authorizing or approving the installation and
14 use of a global positioning device, in writing under oath or equivalent affirmation,
15 to a circuit court for the county where the device is to be located.

16 (2) An application under sub. (1) shall include all of the following:

17 (a) The identity of the person making the application and the identity of the law
18 enforcement agency conducting the investigation.

19 (b) A full and complete statement of the facts and circumstances relied upon
20 by the applicant, to justify the applicant's belief that an order should be issued or
21 extended, including:

22 1. Details of the particular offense that the applicant has probable cause to
23 believe has been, is being, or is about to be committed by the person who owns the
24 vehicle to which the global positioning device is to be attached.

1 2. A certification by the applicant that the information likely to be obtained is
2 relevant to the ongoing criminal investigation being conducted by that agency.

3 **SECTION 3.** 968.365 of the statutes is created to read:

4 **968.365 Issuance of an order for a global positioning device.** (1) Upon
5 an application made under s. 968.355, the court shall enter an ex parte order
6 authorizing the installation and use of a global positioning device within the
7 jurisdiction of the court if the court finds that the applicant has proved to the court
8 that there is probable cause to believe that the person who owns the vehicle to which
9 the global positioning device is to be attached has, is, or will commit an offense and
10 that the applicant has certified to the court that the information likely to be obtained
11 by the installation and use is relevant to an ongoing criminal investigation.

12 (2) An order issued under this section shall do all of the following:

13 (a) Specify the identity, if known, of the person who owns the vehicle to which
14 the global positioning device is to be attached.

15 (b) Specify the identity, if known, of the person who is the subject of the criminal
16 investigation.

17 (c) Specify, if known, the registration plate numbers and the color, make, model,
18 and year of any motor vehicle to which the global positioning device is to be attached.

19 (d) Provide a statement of the offense to which the information likely to be
20 obtained by the global positioning device relates.

21 (3) An order issued under this section shall authorize the installation and use
22 of a global positioning device for a period not to exceed 60 days.

23 (4) Extensions of the order may be granted, but only upon an application for
24 an order under s. 968.355 and upon the judicial finding required by sub. (1). The
25 period of extension shall be for a period not to exceed 60 days.

(5) An order authorizing or approving the installation and use of a global positioning device shall direct that the order be sealed until otherwise ordered by the court.

(6) Evidence obtained by placing a global positioning device on a vehicle in contravention of this section or of s. 940.315 may not be introduced in a criminal trial.

(END)